



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 2, 1998

Mr. James Smith, Jr.
County Attorney
County of Frio
500 E. San Antonio Street
Pearsall, Texas 78061

OR98-2353

Dear Mr. Smith:

You ask this office to reconsider our decision in Open Records Letter No. 98-1642 (1998). Your request for reconsideration was assigned ID# 118571.

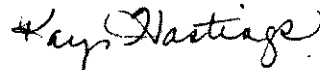
Open Records letter No. 98-1642 determined that while the Open Records Act (the "act") does not require Frio County (the "county") to respond to a request for booking information on a periodic basis, the county must release to the requestor booking information requested for the time period of March, 1998 to the date of the request. You now maintain that the act does not require the county to release the requested information that concerns persons who were arrested and convicted in Idaho because such information is "privileged." You also assert that section 552.108(c) of the Government Code does not apply when the information concerns an Idaho prisoner.

The act generally requires a governmental body to release to a requestor all information it collects or maintains, unless the attorney general determines that the governmental body has established in a request to the attorney general that the information is excepted from disclosure based on one of the act's exceptions to disclosure. A governmental body that seeks to withhold requested information from a requestor has the burden of proving that requested information is excepted from disclosure. *See* Open Records Decision No. 542 (1990). If a governmental body does not establish how and why an exception applies to the requested information, the attorney general has no basis on which to pronounce it protected. Open Records Decision No. 363 (1983). In your original letter to this office, you did not assert that the requested information was excepted from required public disclosure under any of the act's exceptions. Nor do you appear to do so now. You do not explain why you say the information is "privileged." Discovery privileges are not covered by section 552.101 of the Government Code, an exception that applies to information made confidential by law. Open Records Decision No 575 (1990).

We turn to your argument that section 552.108(c) of the Government does not apply to prisoners from Idaho. This office has never interpreted any of the act's provisions, including section 552.108(c), as only applying to information that concerns a Texas resident. *See also* Gov't Code § 552.001(b) (requiring liberal construction of act in favor of granting request for information). Section 552.108(c) limits the applicability of section 552.108 of the Government Code, the "law enforcement" exception, by stating that section 552.108 does not apply to "basic information about an arrested person, an arrest, or a crime."¹ As the county has not asserted that the information is excepted from disclosure based on section 552.108, we need not address the question of whether section 552.108(c) is applicable to information that concerns prisoners from Idaho. Consequently, we affirm Open Records Letter No. 98-1642.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings
Deputy Chief
Open Records Division

KHH/ch

Ref.: ID# 118571

Enclosures: Submitted documents

cc: Mr. Philip Meyer
Law Office of Philip Meyer
740 Isom Road
San Antonio, Texas 78216
(w/o enclosures)

¹We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. --Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976).